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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. .....

SEMI-STEEL CASTING COMPANY OF ST. LOUIS, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Semi-Steel Casting Company of St. Louis, a Corporation, respectfully presents to this Court this, its petition for a Writ of Certiorari directed to the United States Circuit Court of Appeals for the Eighth Circuit, requiring said Court and the Clerk thereof to certify to this Court the record and proceedings of the case in said Court wherein your Petitioner was the Peti-

tioner, and the Respondent, National Labor Relations Board, was the Respondent therein, together with the opinions therein for Review and determination of said cause by this Court.

Said cause was heard in the United States Court of Appeals for the Eighth Circuit by Circuit Judges Thomas, Johnsen and Riddick, on petition of your Petitioner herein for Review of an order of the National Labor Relations Board directed to the Petitioner therein and herein to cease and desist from refusing to bargain collectively with the International Molders and Foundry Workers of North America, Local 59, A. F. L., as the exclusive representative of all of its employees engaged in the production of castings, exclusive of certain employees, with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action in respect to rates of pay, wages, hours of employment, and other condition of employment; and in any manner interfering with the effects of said Union to bargain collectively with said petitioner and, affirmatively, to bargain collectively with said Union as the exclusive representative of all of its employees of a designated unit.

The opinion of the Circuit Court of Appeals was delivered by Circuit Judge Riddick and was concurred in by Circuit Judges Johnsen and Thomas.

The transcript of record in this case, which includes additions showing the proceedings and the opinion in the said Circuit Court of Appeals and the decree therein entered by said Court has been filed herewith in accordance with the rules of this Court.

STATEMENT AND NATURE OF PROCEEDINGS.

For brevity hereinafter your Petitioner, Semi-Steel Casting Company of St. Louis, is referred to as "Company"; International Molders and Foundry Workers of North America, Local 59, A. F. L. as "Union"; and the National Labor Relations Board, as "Board".

Said Company is a small manufacturer of gray iron or semi-steel castings, which, indirectly, become parts of interstate commerce. Its total number of employees number about 140 and those employed in the designated unit number about 129 or 130. It is a Missouri Corporation with its plant and business located in the City of St. Louis, Missouri.

Said Union for at least a year had conducted an "intensive organization campaign to organize all the employees in the Semi-Steel Casting Company" and following the campaign filed petition with the Board (Oct. 15, 1943. R. 3) claiming to represent majority and that Company refused to negotiate (R. 3. Appendix 20): Thereupon Board directed Company and Union to meet with Board and Board suggested election (Appendix 20, 90) at which time consent election entered into (R. 5); Election was held Nov. 3, 1943 and Election Report made (R. 11), to which Company filed its objections November 8, 1943 (R. 3):

At said election the supervisors or inspectors of election were Tony Diguardi, (Bookkeeper) as representative of the Company, Cliff Boylan, (Company employee, but strong Union member and advocate) as the Union representative, and two ladies from the National Labor Relations Board, namely, Miss Marie Pierce, Field Examiner, and Miss Virginia Reck, a Stenographer employed by the Board. There was no representative of the employees, other than the Union man and representative, Cliff Boylan. (Appendix 56, 57), Miss Pierce dominated and directed the election, the counting and tabulation of ballots, and, without consulting others, took the "Fleming" ballot, Exhibit

1, (hereafter referred to) placed it in her purse and directed that it would not be counted. (Appendix 56, 57, 58, 59, 80, 98).

Further facts disclose that the Union carried on an intensive organizing campaign and a campaign to induce employees of the Company to select said Union as their bargaining agent for more than a year prior to the election. Said intensive campaign was carried on by the Union personally soliciting the employees inside and outside of the plant, by passing out literature and notices of Union meetings. The day before the election the Union solicited the employees in person and by circulars requesting them to attend a special organization meeting for said employees, during which time Blome, President of said Union, was present and in personal charge of the campaign. (Blome, Appendix 20, 31 and Shanley, Appendix 91).

On the day of the election, at the time the polls were opened, (2:30 P. M.) Blome, President of said Union, was outside of the polling place (Diguardi, Appendix 74); Blome spent that afternoon, during the election, at a tavern about 350 feet from the polling place where some of the employees ate lunch. (Blome, Appendix 33).

Employees of the Company claimed that they were threatened by Union representatives if they did not join the Union and vote for the Union. (Shanley, Appendix 92).

No representative or officer of the Company was around the polling place at any time during the voting (Diguardi, Appendix 75).

The management of the Company made no objections to the above mentioned campaign and the activities of the Union, and did not interfere, in any manner, with the campaign nor with the solicitation by the Union of its employees. The only time the management objected was when day employees returned at night and thereby interfered with the war production work inside the plant, which was in violation of the rules of the Company. (Shanley, Appendix 91, 92).

The Company always maintained a friendly relationship with the Union, was never opposed to the Union and made no discrimination between employees who were or were not members of the Union. (Appendix, 89, 90).

Prior to about 1937 or 1938 this Union represented this Company's employees, and during that time there was no trouble between the Union or its members and the Company, but all matters were handled and worked out upon a satisfactory and friendly basis. About 1938 factional or other troubles grew up among the employe members of the Union and the Union, whereupon the employees demanded of management that it no longer should recognize said Union, as to matters pertaining to the employees. The feeling between the employees and the Union became bitter and antagonistic. Such feeling still exists. Members tried to resign from the Union, but the Union denied the right to resign and then brought suits against the employees for dues. (See Intervener's Answer, Par. 14, R. 41). (Appendix, 88, 89).

The total number of employees of the designated unit eligible to vote was 129. Of these eligible voters or employees 119 participated and voted in said election. In other words, 119 were present and participated in the election. (R. 16). A majority of those present, participating and voting in said election was 60. No ballots were challenged and the record shows no voter was challenged. At the instance of the representative of the Regional Director of the Board, only 117 votes were certified as "valid votes counted". Two were declared void and not counted. The certification was to the effect that 59 had voted for the Union and 58 against the Union.

There were 119 who participated and voted. A majority of the 119 was 60.

An examination of the two ballots declared void by the Board's representative shows the following:

Respondent's Exhibit I is the ballot where the employee signed his name on that part of the ballot wherein the square "No" appears, or that part of the ballot which indicates a vote against the Union. (R. 19).

Respondent's Exhibit 2 is the ballot where the employee placed an "X" in both squares. (R. 21).

It is true that Miss Pierce offered to assist every voter and instructed the voter, verbally, to mark an "X" in the

square, but Fleming, an old employee of the Company thought he knew how to vote. He had no education and did not know how to read nor write except that he could write his name and knew enough to see and recognize "no" on the ballot. (Appendix 83). He never read the election notice, but knew of the election by hearing same discussed among employees and by Blome, President of the Union, talking to him. He worked on the night shift and went to work about 2:00 P. M. On his way to work he voted, being one of the first to vote, and intended to vote against the Union. (Appendix 84, 87).

November 30, 1943, Union submitted contracts to Company (R. 17): on December 15, 1943, Union contacted Company by 'phone for purpose of arranging conference, at which time no date was agreed upon, and then on January 3, 1944, they agreed that meeting be held at Melbourne Hotel, January 11th, 1944 and such meeting was held. (Appendix 20, 22). At said meeting Company told Union that employees objected to said Union and the employees had advised Company that Union did not represent majority, and Company further advised that said Union did not represent majority and, therefore, Company could not negotiate contract with said Union to which Union replied that said Union did and would represent employees regardless whether a majority of employees wanted the Union or not (Appendix 92, 93). After several hours this conference ended and then, at instance of Union, another conference was arranged, January 18th, with labor conciliator, Hummert, at which time Company explained same as above (Appendix 93, 94). January 25, 1944, Board filed charges against Company (R. 25). At the instance of the Board several conferences were held with Board's representatives at Board's offices (Appendix 81) at which Company advised the representative of the Board that Company was not opposed to any Union among its employees but it wanted to be sure that the Company was dealing with a Union that represented a majority of the employees; that this Union did not so represent a majority and further that the employees didn't want this Union, (Appendix 82); thereupon Board filed formal complaint against Company March 23, 1944 and on said same day served notice of hearing before a Trial Examiner to be set April 6, 1944;

(R. 27, 29) on or about March 30, 1944, Company filed its Answer (R. 32); at instance of Company said hearing continued to May 1, 1944 (R. 31). Hearing had before Trial Examiner May 1, 1944 (Appendix 1): Motion of Nick Herman, et al., (employees) to intervene and for permission to file Answer presented, May 1, 1944 (Appendix 2, 10, R. 38, 40): said right to intervene and to file said Motion and Answer was denied May 1, 1944 (Appendix 2, 10); Trial Examiner's Intermediate Report dated May 23, 1944 (R. 66): June 8, 1944, Company filed with Board its exceptions to Trial Examiner's Report and request to be heard in oral argument (R. 44): at request of Company, time to file Brief extended to June 21, 1944 (R. 45): Notice of Hearing before Board, dated November 14, 1945, setting Hearing at Washington, D. C., November 29, 1945 (R. 54); Company, because of the unusual delay in setting case for hearing ask resetting, which request granted to December 13, 1945 (R. 54, 55); Said cause was heard before the Board at Washington, D. C., December 13, 1945 (R. 55); Decision and Order of said Board rendered, made and filed March 14, 1946, and dissenting opinion filed (R. 56, 63).

Company has never been opposed to Union among its employees; has never discriminated between Union or non-Union employees: has no objection to negotiating a contract with Union for the employees providing it is a Union which is the choice of a majority of its employees; and only refused to negotiate contract with this Union because employees were antagonistic to said Union and advised Company that a majority of employees did not want said Union: the election results showed that said Union did not have a majority (Appendix 93, 94, 99); Company management and said Union officials had always been on friendly terms for more than 20 years (Appendix 90, 91): The position of the Company has always been that there was no opposition to the Union; no objection to the Union nor any feeling against the Union, but "our only wish is to take care of the wishes of our men, and maintain peace and production, that is our main object." (Appendix 90, also 81 and 82).

At the time of the hearing before the Trial Examiner on May 1, 1944 there had already been many voluntary changes in the personnel of Company's plant. Since the election and up to May 1st, 1944 some 15, 20 or 25 employees had left

the employ of the Company and these had been supplanted by women because men were not available (Appendix 99, also 65). The Court would be justified in taking judicial knowledge of the great changes in employment during the war especially in 1943 and early 1944 due to induction into service and other causes, as it was a matter of common knowledge.

The majority of the Board (Herzog and Houston) in an opinion sustained the Regional Director and the Trial Examiner, and made the Order. Gerard D. Reilly, member, dissented in a separate opinion (R. 56-65).

The Board's Order is as follows:

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Semi-Steel Casting Company, St. Louis, Missouri, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Molders & Foundry Workers of North America, Local 59, A. F. L., as the exclusive representative of all its employees engaged in the production of castings, excluding drivers, office and clerical employees, watchmen, contract laborers, maintenance men, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of International Molders & Foundry Workers of North America, Local 59, A. F. L., to bargain collectively with Semi-Steel Casting Company, St. Louis, Missouri.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Molders & Foundry Workers of North America, Local

59, A. F. L., as the exclusive representative of all its employees engaged in the production of castings, excluding drivers, office and clerical employees, watchmen, contract laborers, maintenance men, and supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant in St. Louis, Missouri, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Fourteenth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that the said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director of the Fourteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 14 day of March, 1946.

PAUL M. HERZOG, Chairman.

JOHN M. HOUSTON, Member.

(Seal) NATIONAL LABOR RELATIONS BOARD.

Gerard D. Reilly, dissenting:

Reasons relied on for the allowance of this Writ are:

First. The opinion of said Circuit Court of Appeals has decided important questions of law in a way untenable and in conflict with applicable decisions of this Court and in conflict with the weight of authority, to-wit:

(a) In holding and deciding that the decision and order of the National Labor Relations Board be upheld in de-

termining what constituted a clear majority of the employees under the facts and circumstances presented and under the terms of Act.

(b) That said opinion is contrary to the Act and contrary to the purposes and objects of the Act in that said opinion denies to Petitioner and its employees the right of its employees to full freedom of association, and their free choice of selecting their collective bargaining agent by a clear majority of the employees of the designated unit.

(c) That said Court in its opinion, contrary to the weight of authority and contrary to the decisions of our Federal Courts, erroneously held that "It is also a question of Federal and not of local law", and thereby refused to consider and to be guided by the decisions of the Supreme Courts of the various states on the question of "Majority" and the choice of majority.

This, too, in specific conflict with National Labor Relations Board v. Standard Lime & Stone Company, 149 F. 2d. 435, l. c. 436; and also in conflict with the same principle of law to the effect that "Political principle of majority rule should be applied" as held in Virginia R. Company v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592, 81 L. Ed. 789.

(d) In holding and deciding that by reason of having executed a formal, prepared and printed (by the Board) agreement for a consent election, presented by the Regional Director of the Board wherein, without choice, the Director is named as arbitrator, (virtual duress and without mutuality), your Petitioner is bound by the finding of the Regional Director to the effect that said Union represents a majority, irrespective of the facts and the law.

Such holding by said Circuit Court of Appeals is contrary to the intendment as inferred in various decisions of our Federal Courts, especially where the actions of the Regional Director and the Board show arbitrary action and show abuse of discretion.

(e) In sustaining the Board in holding your Petitioner guilty of unfair labor practices where there was and is no evidence to sustain any such decision, except the mere fact that Petitioner refused to recognize said Union because said Union did not represent a majority and because its employees were antagonistic to said Union and did not want said Union to represent them.

In that respect the opinion of said Circuit Court of Appeals is in conflict with Boeing Airplane Company v. National Labor Relations Board. 140 F. 2d 423, l. c. 433.

(f) That said Court in its opinion holding that "The Board found that 'any loss in the Union's majority status is attributal to the respondent's unlawful refusal to bargain' ". Undertakes to uphold said Board without any facts or evidence before the Board or before the Court to warrant or justify any such statement. The undisputed facts are that the majority status materially changed from time of election to time of hearing before the Board's Examiner, by employees voluntarily leaving the service of Petitioner and due to induction into military service.

Second: The opinion of said Circuit Court of Appeals has decided an important question of law in a way untenable and in conflict with the Fifth Amendment of the Constitution of the United States: "No person shall * * * be deprived of life, liberty, or property, without due process of law", to-wit by sustaining the arbitrary actions of the Regional Director and the Board in depriving your Petitioner's right to contract with the majority of its employees and also in depriving Petitioner's employees of their right of free choice and action in the selection of a collective bargaining agent. Inland Steel Co. v. N. L. R. B. 109 F. 2d, 9. l. c. 20.

Third: The opinion of said Circuit Court of Appeals has decided important questions of federal law as set forth in the foregoing paragraphs which should be settled by this Court.

In the case of National Labor Relations Board v. Standard Lime and Stone Company, 149 F. 2d. 435 at page 437 said that there is no decision of the Supreme Court as to a majority of votes cast in an election necessary for

the choice of a bargaining representative under the National Labor Relations Act.

Your petitioner in the memorandum of brief attached to this petition will elaborate upon the foregoing questions.

Your petitioner presents herewith a certified copy of the entire record in said cause including the proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, and the opinion of that Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued under the seal of the court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding the said Court to certify and send to this Court on day to be designated, a full and complete transcript of record and all proceedings of said United States Court of Appeals for the Eighth Circuit had in said cause, to the end that the said cause may be reviewed and determined by this Honorable Court as provided by law and that the said judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be reversed by this Honorable Court and for such further relief as may seem proper. And your petitioner will ever pray.

JOS. T. DAVIS,

Counsel for Petitioner.

State of Missouri,
County of Franklin—ss.:

Joseph T. Davis, being duly sworn on oath deposes and says that he is counsel for petitioner, Semi-Steel Casting Company of St. Louis; that he has read the foregoing annexed petition and knows well the contents thereof; that he has also carefully read and studied a duly certified copy of the transcript of record which accompanies the petition herein, being the transcript of record in the case at bar; that the matters in said petition are in the judgment of this affiant duly supported in and by said transcript of record, and that he knows of the proceedings had, and that the

facts in said petition herein stated are true to the best of his knowledge and belief.

JOSEPH T. DAVIS.

Subscribed and sworn to before me this 4th day of June, 1947.

(Notary Seal)

LEO A. POLITTE,
Notary Public in and for the County of Franklin, State of Missouri.

My term expires June 6, 1950.

I hereby certify that I have examined the foregoing petition, and in my opinion the petition is well founded, and that the case is one in which the prayer of the petitioner should be granted by this Court.

JOSEPH T. DAVIS,
Counsel for Petitioner.

MEMORANDUM OF BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinion of the Circuit Court of Appeals in this cause has not been published but is printed in Transcript of Record p.p 7-17.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1945 (U. S. Code Ann., Title 28, Section 347).

The decree of the Circuit Court of Appeals was entered April 26, 1947, (R.17-19) and petition for re-hearing denied April 21, 1947, (R.32).

Statement.

To avoid repetition, reference is here made to the "Statement and Nature of Proceedings" contained in the foregoing petition for a writ.

Specifications of Errors to be Waged.

All of the errors assigned are intended to be urged; however, the following are respectfully submitted as errors of the Circuit Court of Appeals, adequate under the rules of this Court, to just a review of this Court:

The Circuit Court of Appeals erred:

1. In sustaining the National Labor Relations Board's finding that a majority of the employees, at a consent election, had selected as the bargaining agent the International Molders and Foundry Workers of North America, Local 59, A. F. L., as the exclusive representatives of all employees of a designated unit.

2. In holding that said Court was bound by the findings of the Regional Director and the Board under the terms of the Agreement for consent election.

3. In refusing to consider and be guided by State Supreme Court decisions and decisions of the Federal Courts on the question of majority of employees at an election under the Act.

4. In holding the Petitioner herein guilty of unfair labor conduct under the Act.

5. In sustaining the Board as follows: "The Board found that 'any loss in the Union's majority status is attributable to the respondent's unlawful refusal to bargain' ".

6. By holding that Petitioner herein is, under the facts and law, deprived of the right to contract with its employees, in violation of the Fifth Amendment of the Constitution of the United States.

ARGUMENT.

I.

In considering and determining the question of whether the Union, as a result of the election, represented the majority of the employees of that particular unit, we must consider and determine; (1) Whether the majority is to be determined from all the votes of the employees (admittedly entitled to vote) who participated in or voted in said election, or whether said majority shall be determined by the number of employees whose votes were counted and certified under the direction of the Board's representatives in charge of the election; (2) Whether a ballot of an eligible employee present, participating and voting should be counted as a ballot or vote cast even though both squares were marked indicating no preference; and (3) Whether a ballot cast by an inexperienced and illiterate employee should be thrown out and not counted because said employee signed his name over the "No" square instead of placing an "X" in the square, especially where his intention is determined from the facts and circumstances that he desired to cast his vote against the Union.

The Board adopted the election as the sole method to determine whether the Union represented the majority of Company's employees and resorted to no other means to determine the same, consequently the election held by the Board, November 3, 1943 is determinative.

At said election the supervisors or inspectors of election were Tony Diguardi, (Bookkeeper) as representative of the Company, Cliff Boyland, (Company employee, but strong Union member and advocate) as the Union representative, and two ladies from the National Labor Relations Board, namely, Miss Marie Pierce, Field Examiner, and Miss Virginia Reck, a Stenographer employed by the Board. There was no representative of the employees, other than the Unio man and representative, Cliff Boyland. (Ap-

pendix 56, 57), Miss Pierce dominated and directed the election, the counting and tabulation of ballots, and, without consulting others, took the "Fleming" ballot, Exhibit 1, (hereafter referred to) placed it in her purse and directed that it would not be counted. (Appendix 56, 57, 58, 59, 80, 98).

Miss Pierce, for the Board, before election, directed the management of the Company not to, in any way, advise employees as to election or how to vote. (Appendix 98). In other words, the Board placed the management of the Company in a position at that time, of fear as to discussing any phase of the proposed election with employees.

Although the declared object of the Act, and as interpreted by our Courts, is to guarantee to and protect the employees from any and all interferences of the Company, the Union or the Board in the matter of making their own and free choice of a representative as their bargaining agent, here we have a flagrant violation thereof.

The election was dominated by the Board and the Union. The employees, for whom the Act was passed, had no voice in the conduct of the election and were not represented as supervisors or inspectors of election. Furthermore, in these proceedings, the employees have been denied the right to be heard.

The purpose and policy of Congress as expressed in the National Labor Relations Act is stated in Section 151, Title 29, U. S. C. A. to be that of

"by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of *full freedom* of association, self-organization, and designation of representatives *of their own choosing*, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection", thereby to protect interstate commerce from interruption and obstruction caused by industrial strife.

Again in Section 159 as further indication of the true purpose and intent it is provided that, "Representatives designated or selected for the purpose of collective bargaining *by the majority* of the unit * * *".

The same purpose is further shown in Section 157 as follows;

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of *their own choosing.*"

Further facts disclose that the Union carried on an intensive organizing campaign and a campaign to induce employees of the Company to select said Union as their bargaining agent for more than a year prior to the election. Said intensive campaign was carried on by the Union personally soliciting the employees inside and outside of the plant, by passing out literature and notices of Union meetings. The day before the election the Union solicited the employees in person and by circulars requesting them to attend a special organization meeting for said employees, during which time Blome, President of said Union, was present and in personal charge of the campaign. (Blome, Appendix 20, 31 and Shanley, Appendix 91).

On the day of the election, at the time the polls were opened, (2:30 P. M.) Blome, President of said Union, was outside of the polling place (Diguardi, Appendix 74); Blome spent that afternoon, during the election, at a tavern about 350 feet from the polling place where some of the employees ate lunch. (Blome, Appendix 33).

Employees of the Company claimed that they were threatened by Union representatives if they did not join the Union and vote for the Union. (Shanley, Appendix 92).

No representative or officer of the company was around the polling place at any time during the voting (Diguardi, Appendix 75).

The management of the Company made no objections to the above mentioned campaign and the activities of the Union, and did not interfere, in any manner, with the campaign nor with the solicitation by the Union of its employees. The only time the management objected was when day employees returned at night and thereby interfered with the war production work inside the plant, which was in violation of the rules of the Company. (Shanley, Appendix 91, 92).

The Company always maintained a friendly relationship with the Union, was never opposed to the Union and made no discrimination between employees who were or were not members of the Union. (Appendix, 89, 90).

The following facts throw illuminating light on the reasons why the employees did not want this Union and why this Union could not secure a majority after a years' intensive campaigning:

Prior to about 1937 or 1938 this Union represented this Company's employees, and during that time there was no trouble between the Union or its members and the Company, but all matters were handled and worked out upon a satisfactory and friendly basis. About 1938 factional or other troubles grew up among the employe members of the Union and the Union, whereupon the employees demanded of management that it no longer should recognize said Union, as to matters pertaining to the employees. The feeling between the employees and the Union became bitter and antagonistic. Such feeling still exists. Members tried to resign from the Union, but the Union denied the right to resign and then brought suits against the employees for dues. (See Intervener's Answer, Par. 14, R. 41). (Appendix, 88, 89).

The facts, disclosed that if there were any coercion displayed in the election it was displayed by the Union, sanctioned and aided by the Board. It was not such an election as to give to the employees a fair and free right to select their bargaining agent by their own choosing. It was and is an attempt to foster upon the employees a Union to which Union the employees are antagonistic by reason of past dealings and associations.

Such is not the purpose and object of the Act and was not the intention of Congress.

In construing this Chapter or Act in relation to actions and order of the Board pertaining to the selection of bargaining representative by a majority of the employees, our courts have held that the underlying policy is to safeguard the rights of the employees in self-organizations, the selection of bargaining representatives of their own choice, and "by so doing it would promote industrial peace and

remove obstructions (labor strife) from the free flow of commerce. National Labor Relations Board v. Fansteel Metal Corp., 306 U. S. 240, 258, 81 L. Ed. 627, 636. Also that "the Statute purports to be drawn in favor of protecting the interests of the employees, not of the Union as such", and "The statute guarantees to all employees the right to bargain collectively through their chosen representatives." Medo Photo Supply Corporation v. National Labor Relations Board, 321 U. S. 678, 684, 695 and 701, 88 L. Ed. 1007, 1011, 1017, 1020;

"It cannot be too often stated that the purpose of the Act is to leave the employees with a free choice, not to subject them to the compulsion of their employer, outside labor Unions, the Labor Relations Board or anybody else as to what is their best interest in joining or forming labor organizations." N. L. R. B. v. Sun Shipbuilding and Dry D. Co., 135 Fed. 2d. 13, 15, (C. C. A.); To the same effect, Nierotko v. Social Security Board, 149 Fed. 2d 273, 277; This Honorable Court, in Cudahy Packing Company v. National Labor Relations Board, 102 Fed. 2d 745, recognized, under the Act, the employees' "entire freedom of choice"; and again in the case of Hamilton-Brown Shoe Company v. National Labor Relations Board, 104 Fed. 2d. 49, 54, held; "Under the law there should be guaranteed to the employees the absolute freedom of choice, and that freedom should not be controlled nor influenced in any way by any expression of or order coming from the Board of from this Court.

Congress intended that under this Act, and so interpreted and upheld by our Courts, that there is guaranteed to the employees the absolute freedom of choice as to who shall be the collective bargaining agent for the majority of the employees, for the reason as stated by the Court (C. C. A. 6) in National Labor Relations Board v. Knoxville Pub. Co., 124 Fed. 2d 875, 881, namely; "The intent of the Act was to permit an employee to surrender to a collective agent his individual right to bargain with an employer, after which he no longer possesses this right during the life of the contract * * *".

The Congress and the Courts recognize the importance of the Act to the employee (1) in that he gives up his

natural and legal right to bargain and contract for himself as an individual, and that (2) such right cannot be arbitrarily taken away from him, but that (3) his right to choose or designate a bargaining representative in conjunction with the majority of his fellow employees is guaranteed to him.

With the foregoing background, we shall now determine whether the Union, as a result of an election, November 3, 1943, was the choice of the majority of the employees of the specified unit of the Company.

The question as to whether "Majority" as used in subsection (a) section 159 means a majority of all employees of the designated unit or whether "Majority" means a majority of the employees voting or participating in the election as a quorum or as a majority of that class of employees and then a majority of such quorum so participating and voting in said election has been decided as follows: "The general rule, in the absence of a clear provision otherwise is that voters (employees) who could have voted in a formal election but did not are are considered to assent to the will of the majority of those who did vote: so that if those who do vote make up a majority of all, the will of all is expressed by the majority of those who vote". National Labor Relations Board v. Whittier Mills Company, 111 F. 2d, 474, 477.

What then constitutes the majority of said quorum or the majority of the majority of employees?

The Court in the above Whittier Mills case relied upon the Supreme Court case of Virginia Railways Company v. Federation No. 40, 300 U. S. 515, 81 L. Ed. 789, where the Supreme Court stated and held "Election laws providing for approval of a proposal by a specified majority of an electorate have been generally construed as requiring only the consent of the specified majority of those *participating in the election*", and also "Those who do not participate are presumed to assent to the expressed will of the *Majority of those voting*". Here again the courts relied upon Carroll County v. Smith, 111 U. S. 556, 28 L. Ed. 517; Douglas v. Pike County, 101 U. S. 677, 25 L. Ed. 968; Cass County v. Johnston, 95 U. S. 360, 369, 24 L. Ed. 416, 417.

The above Cass County case originated in this 8th Circuit (Mo.) and the Supreme Court approved quotations from the Supreme Court of Missouri to the effect that the majority was the majority of those voters participating in the election or the majority of those voting. The Pike County case, supra, also originated in Missouri, and in that case the Supreme Court concluded that "the requisite assent of those voting at an election was deemed by the Legislature to be the assent of the qualified voters". Again in the Carroll County case, supra, the Supreme Court in its conclusion said: that the required two-thirds assent "meant the vote of two-thirds of the qualified voters present and voting at such election."

The conclusion, therefore, reached by our Courts is that in order to determine the bargaining representative of the employees "own choosing", is that in an election a majority of those participating in the election, a majority of those voting or a majority of employees present and voting is required to determine the bargaining representative of all the employees of a particular unit.

What are the facts in this case?

The total number of employees of the designated unit eligible to vote was 129. Of these eligible voters or employees 119 participated and voted in said election. In other words, 119 were present and participated in the election. (R. 16). A majority of those present, participating and voting in said election was 60. No ballots were challenged and the record shows no voter was challenged. At the instance of the representative of the Regional Director of the Board, only 117 votes were certified as "valid votes counted". Two were declared void and not counted. The certification was to the effect that 59 had voted for the Union and 58 against the Union.

This tabulation and certification is contrary to and in violation of the Act and the intent of the Act. There were 119 who participated and voted. A majority of the 119 was 60.

In other words, in furtherance of the desire and wish to force said Union upon the employees against the will of the majority of the employees and against the majority of the

quorum; the Board undertook to disregard two eligible voting employees who were present, who participated and voted in said election and has arbitrarily and illegally declared their ballots void. Mind you the "observers" did not declare these votes void, but they were declared void by Miss Pierce who acted for the Regional Director and the Board. She did not show said discarded ballots to the other "observers", but placed same in her pocket or purse.

An examination of the two ballots declared void by the Board's representative shows the following:

Respondent's Exhibit 1 is the ballot where the employee signed his name on that part of the ballot wherein the square "No" appears, or that part of the ballot which indicates a vote against the Union. (R. 19).

Respondent's Exhibit 2 is the ballot where the employee placed an "X" in both squares. (R. 21).

For the present we will consider the ballot Exhibit 2. Clearly, there is nothing on or about this ballot to declare same a void ballot. It is true that the employee expressed himself as having no preference, and, therefore, the ballot cannot be counted for or against, but it is not void. It is, in all respects, a legal ballot cast by an unchallenged and eligible voting employee. He desired to and did participate in and voted his convictions at said election. While the ballot cannot be counted for or against it must be counted as a vote cast by an employee for the purpose of determining a majority. In considering the same, and for the present disregarding Ballot Exhibit 1, we have 118 ballots cast by employees participating and voting in said election. A majority of 118 is 60 and 59 votes counted would not be better than a tie vote and not a majority.

If the law requires that a majority or a certain proportion of the votes cast shall be for a proposition in order that it should carry then all votes cast, including blank and unintelligible ballots, must be considered in determining the number of votes cast. Wellsville v. Connor, 91 Ohio S. 28, 109 N. E. 526.

Smith v. Renville County, 64 Minn. 16, 65, N. W. 956;

McNable v. Hamilton, 349, Ill. 209, 181 N. E. 646;

Westville v. Stillwell, 24 Okla. 892, 105 P. 664.

Next we shall determine whether a ballot cast by an uneducated, inexperienced and illiterate negro employee, eligible in every respect should be arbitrarily declared void, discarded and not counted (1) against the Union, nor (2) counted as a vote in determining the majority, because said employee signed his name above the "No" square instead of placing an "X" in the square.

The ballot referred to is Respondent's Exhibit I with the signature "George Fleming" was signed in that division of the ballot wherein the "No" square is placed, and with the voters signature somewhat over the "No" square but within the section of sub-division set aside for a vote against the Union.

The right of the voter was not challenged, nor was the ballot challenged except by the representative of the Board who took and secreted the ballot. The voter was in all respects eligible and was an employee of the unit.

The ballot itself, on its face, definitely indicates and shows the intent of the employee voter to vote against the Union. Had he placed his signature at the bottom of the ballot being the natural place for a signature on any document the ballot would not indicate the intention of the voter. Had he placed his signature below the square the intention may not have been so certain, but here he placed his signature immediately after or following the printed "No" and above and to the right of the "No" square.

It is true that Miss Pierce offered to assist every voter and instructed the voter, verbally, to mark an "X" in the square, but Fleming, an old employee of the Company thought he knew how to vote. He had no education and did not know how to read nor write except that he could write his name and knew enough to see and recognize "no" on the ballot. (Appendix 83). He never read the election notice, but knew of the election by hearing same discussed among employees and by Blome, President of the Union, talking to him. He worked on the night shift and went to work about 2:00 P. M. On his way to work he voted, being one of the first to vote, and intended to vote against the Union. (Appendix 84, 87).

The ballot on its face and all the facts and circumstances prove, beyond doubt, that said Fleming intended to vote

"No" and cast his ballot against the Union. Said ballot should have been counted as a vote against the Union.

The cardinal rule to be followed in counting ballots is to ascertain the intent of the voter as disclosed by the official ballot actually cast and to give effect to that intent by counting the ballot. Extrinsic evidence may be resorted to in order to determine the intent of the voter.

Unless in contravention of some essential mandate of the law, the intention of the voter must be given effect. Hall v. Barton, 290 Mass. 476, 195 N. E. 753. Swift v. Registrars of Voters of Quincy, 281 Mass. 271, 183 N. E. 730.

In the absence of fraud or a mandatory provision of the law to the contrary, every presumption should be in favor of the validity of the ballot and where the intent of the voter can be ascertained with reasonable certainty, the vote of a qualified voter should be counted notwithstanding any defect or irregularity in or on the ballot on which the vote was recorded.

Hall v. Barton, supra; Stratton v. Hall, (Tex. C. of A. 90 S. W. (2d) 865; Wellsville v. Connor, 91 Ohio S. 28, 109 N. E. 526; Serpas v. Trebusq (La.) 1 So. 2nd 346.

In the instant case there is no mandatory provision in the Act as to the manner of holding an election nor as to the conduct of such election. There is no mandatory provision as to the validity of a ballot nor as to the manner in which it shall be cast. There are no inhibitions as to the ballots nor as to the voting, tabulating, or counting.

While the Act provides that the Board, generally may make rules and regulations only under the express authority set forth in the Act and not mandatory regulations, still the Board has not made rules or regulations containing mandatory provisions as to the method or conduct of such election. There is no mandatory provision as to how a voter may cast his ballot.

The pertinent regulation of the Board is;

"Section 203.9. Election procedure: Election Report: objections, etc.

> "Where the Board determines that a secret ballot shall be taken, it shall direct such ballot to be con-

ducted by a designated agent upon such terms as it may specify. Upon the conclusion of such ballot, the agent conducting the ballot shall prepare an Election Report containing a tally of the ballots, his rulings, if any, upon the challenged ballot and his findings and recommendations, which he shall cause to be served upon the parties.

Within five days thereafter the parties may file with the agent conducting the ballot an original and three copies to the objections of the conducting of the ballot or the Election Report."

Another rule of the Board is the following:

"Section 208.1. Rules are to be liberally construed to effectuate the purposes and provisions of the Act."

It must be recognized that political election laws, to avoid fraud and corruptive practices must, of necessity, be much more stringent in their provisions, therefore, more mandatory than in the case of this nature where, "the intent of this election was to permit an employee to *surrender* to a collective agent his individual right to bargain with an employer, after which he no longer possesses such right during the life of the contract." N.L.R.B. v. Knoxville Publishing Co., 124 Fed. (2d) 875.

Even under the political and general election laws, the general principle of law applicable is stated in 29 C. J. S. as follows:

"Sec 214 (b)—*Construction of Statutes as Mandatory or Directory:*

"Mandatory provisions of election laws are those whose violation invalidates the election, whereas directory provisions are those which, while they should be obeyed, may nevertheless be disobeyed without necessarily invalidating the election. Statutory regulations governing the conduct of elections will be construed as mandatory where expressly or in effect made so by the terms of the statute, or where they affect the merits of the election, but otherwise will, as a rule, be construed as purely directory, especially after the election has been held."

> "Statutes giving directions as to the mode and manner of conducting elections will be construed by the Courts as directory, unless a non-compliance with their terms is expressly declared to be fatal, or will change or render doubtful the results."

There is nothing in the Act nor is there anything in the Rules and Regulations of the Board which declares a ballot invalid if the employee fails to mark an "X" in the square provided on the ballot or where the employee signs his name on the ballot immediately above and partially in the square.

The carefully prepared "Agreement for Consent Election" adopted by the Board and presented by the Board in its prepared, printed form to the respective parties for their signatures contains no provisions to the effect that such a ballot would be void and not counted. (R. 5 to 7).

The only place where there is any mention of the fact that the ballot must not be signed is at the very bottom of a double page "Notice of Election", and then merely says "this is a secret ballot and must not be signed." (R. Ex. 4, p. 23). Even to an intelligent and casual observer this would not be especially noticeable in view of the other part of the notice being in large black type and other parts of it being in red type. Even if it were noticeable it does not provide that the ballot will be void or that the ballot will not be counted if it contains such a signature. Therefore, even with this minor and indefinite wording, apparently intended as an instruction, there can be no justification for invalidating the ballot.

Furthermore, the employees were not advised and were not notified at the time of the election by the representative of the Regional Director that a ballot *signed by the employee would be invalid and would not be counted.*

Under the general election laws, namely political elections, the general principle of law is to the effect that the voter's intention, if it can be ascertained, shall control. If that is the law in general and political elections which are controlled by strict statutory provisions, then certainly it must be true that the intention of an employee who is about to sacrifice his individual privileges and rights as to em-

ployment and his rights to contract, should prevail over any irregularity or non-authorized marking. The general principle of law applicable to general and political elections is stated in 29 C. J. S. Section 174 as follows:

> "While statutory provisions governing the manner of indicating the voter's choice on the ballot must be complied with, the voter may not be disfranchised where he made an honest, although partly unsuccessful effort at compliance, and in general, his intent will be given prime consideration".
>
> "While such provisions (Re: marking of ballots) are sometimes considered mandatory (by statute), in some jurisdictions they are regarded as merely directory, and through all of the cases the general principle of construction is recognized that a voter should not be disfranchised where it is clear, but only in such cases, that he made an honest effort to comply with the statutory requirements, although he may not have been entirely successful. *Thus ballots will not be treated as void merely because of irregular or unauthorized markings which appear to have been innocently made as a result of accident, awkwardness, nervousness, inattention, mistake, ignorance or physical infirmity, if the lawful intent of the voter can be ascertained.*"

The Courts have recognized this general principle of law and we take the liberty of citing a few of those cases out of a great many.

Since Respondent is a Missouri Corporation, its employees are citizens of Missouri, and the election was held in Missouri, considerable weight should be given to the decisions of the Supreme Court of Missouri.

Right of suffrage cannot be lightly denied. The Supreme Court of Missouri in *Nance* v. *Kearby*, 251 Mo. 374, 158 S. W. 629, clearly and definitely stated well recognized principles of law relative to the rights of voters, as follows: (l. c. 832).

> "While the right to vote is not a vested, natural right in a strict sense, yet it is a constitutional right in those citizens possessed of enumerated constitutional

qualifications. (Constitutional, Art. 8, Sec. 2). *It may* be regulated by statute but not lightly denied. (Glass v. Evans, 244 Mo. l. c. 350; Bowers v. Smith, 111 Mo. l.c. 55) 'No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage' (Constitution, Art. 2, Sec. 9). *So jealous is the law in that behalf that voters are privileged from arrest at, or going to or coming from,* the polls except for treason, felony or breach of the peace. (Constitution, Art. 8, Sec. 4). *So, the subject matter is tender*", and;

"*The very taproot and reason for any election at all among a free people, is that the majority may rule; hence there are two main settled and uniform rules of interpretation.* thus;

"*First: Election laws must be liberally construed in aid of the right of suffrage.* State ex rel v. Hough, 193 Mo. l.c. 651; Hale v. Stimson, 198 Mo. 134). *The whole tendency of American authority is towards liberality to the end of sustaining the honest choice of electors.* (Stackpole v. Hallahan, 16 Mont. 40). *The choice of electors must be judicially respected, unless their voice is made to speak a lie, or a result radically vicious, because of a disregard of mandatory safeguards.*

"*Second: The uppermost question in applying statutory regulations to determine the legality of votes cast and counted is whether or not the statute itself makes a specified irregularity fatal. If so the Courts enforce it to the letter. If not, Courts will not be astute to make it fatal by judicial construction.* (Glass v. Evans, 244 Mo. l.c. 353; Hehl v. Guion, 155 Mo. 76)".

Bradley v. *Cox*, 271 Mo. 438, 197 S. W. 88, 91, is a case where the ballot of the Democratic party by mistake omitted, in a certain County, the name of a State candidate, and while the facts may not be like those here presented, still the underlying principle of law upon which that case was decided is here applicable. In that case the Supreme Court of Missouri held:

"There are no precedents. No similar case has heretofore engaged the attention of any Court so far

as industry of counsel or our own investigation has disclosed. *This Court is, however, committed, as are all Courts, to the principle that the disfranchisement of voters is not favored"*, and further the Court held;

"Something is said concerning the result and affect of the holding that the 1,311 votes in question shall be counted for contestant. Perhaps there is no impropriety in pointing out the effect of a contrary holding."

In the case of Lankford v. Gebhart, 130 Mo. 621, 32, S. W. 1127 the facts were that certain *voters had written their names on ballots.* The Supreme Court of Missouri at page 630 said and held;

"Even though the Statute was intended, as doubtless it was, to require when delivered by the voter to the judges should have no other writing on the back, except the names or initials of the judges, and the number of the ballot, it should not be regarded as mandatory. There are no negative or other words making it mandatory in form, as was the case with the Statute it repealed. * * *

"Nor can we see that the mere writing of the name upon the ballot, though done by the voter himself, was such a violation of the intended secrecy of elections as should render it void. * * *

"The Statute we think should only be considered as giving direction to the officers of the election in respect to the discharge of their duties and not as mandatory upon the voter. *If the name was so written on the ballot that it could be seen, the judges should have refused to receive it, and required the voter to prepare another. As it was accepted by the judges and there was no evidence of intentional violation of the law on the part of the voter, the vote was properly counted."*

The intent and will of voter shall prevail! In the case of *Gumm* v. *Hubbard*, 97 Mo., 311, 11 S. W. 61, where the names of candidates written by the voters, in a German community, were misspelled and ambiguous, the ballots were challenged, but the Missouri Supreme Court held they should be counted upon the principle that, *"Effect should be given to the will of the electors, and it is now generally*

agreed that the circumstances surrounding the election may be given in evidence, on an election contest, to explain ambiguities in the ballots".

Non-secrecy of the ballot does not void it:

In the case of *Bruninger* v. *Hill,* 277 Mo. 239, 248, 210 S. W. 67, the Supreme Court of Missouri on the question of secrecy of the ballot held:

> "Admitting, therefore, that the Constitution in providing for elections by ballot, means a secret ballot, and the fact that the law provides means to encourage and facilitate the preparation of such ballots, it does not follow in the better absence of fraud, unfairness or other effort made to influence the voter, that a ballot not prepared and cast in secret is invalid. On the contrary, although the facilities for secrecy are thus afforded, it could not in reason be held that if the voter tendered a ballot prepared and furnished to him under the requirements of the law, his disregard of the law in regard to its secret preparation or even his announcement as to the manner in which he had voted, would invalidate his vote."

Cases from other jurisdictions maintain the same principles.

In the instant case there are no provisions in the Act which prohibit the writing of the name of the voter on the ballot, nor is there any provision which prohibits the placing of distinguishing marks or marks for the purpose of identification upon the ballot, nor are there any provisions that ballots which contain such names or marks shall be declared void and not counted. There is nothing mandatory. There is nothing prohibiting the writing of the name thereon. Since there is no such mandatory provision, the Board had no right or authority to reject the ballot in question as a void ballot. Attorney General v. Bartlett, 75 N. H. 388.

The reasonable conclusions, therefore, as for the reasons and justification in setting aside the Board's order herein are as follows:

1. Even, in violation of the true spirit and intent of the Act by its intensive campaign and solicitation without

any interference from the Company, the Union was unable to secure a vote of approval by the majority of the employees of the prescribed unit.

2. The reason for the employees rejecting the Union is that an antagonistic feeling exists between the employees and the Union, which makes the Union an undesirable bargaining representative for the majority of the employees.

3. One Hundred Nineteen (119) of the One Hundred Twenty-Nine (129) eligible employees were present, participated in and voted in the election. Each of these and the ballots of each must be counted to determine the majority. Sixty (60) votes were required for a majority. Whereas, the Union (according to the erroneous tabulation) received 59 votes or 1 less than a majority.

4. The Board and its representative unlawfully and wrongfully rejected as void and refused to consider and count the ballot Respondent's Exhibit 2 (R. 21). Said ballot is not void. It should be counted in the determination of the majority. By counting said ballot, the total number would be 118, and a majority thereof would be 60, whereas the Union (According to the erroneous tabulation) received 59 or one less than a majority. At best it was a tie vote of 59 for and 59 against.

5. The Board and its representative erroneously and illegally declared void and refused to consider and count ballot Respondent's Exhibit 1 (R. 19). Said ballot, under the provisions of the Act, was a valid ballot where the intention of the voter was manifest and should be counted as a vote against the Union which would have changed the erroneous tabulation to 59 for and 59 against the Union, but less than a majority for the Union. However, if said ballot could not be counted as a vote against the Union it should be counted as a ballot to determine a majority and in such event the Union again failed in securing a majority.

In any event, the conclusion is that the Union did not receive a majority of the votes cast by the employees present, participating and voting in said election, and, therefore the order of the Board should be set aside.

II.

As previously contended, said Union, as a result of the election, November 3, 1943, did not then represent a majority of the employees of the designated unit of said Company. Even though the erroneous certification of said election should be considered, it will be noted that whatever margin there was, claimed by the Union, it was only by one vote, namely 59 for and 58 against.

In view of the foregoing facts the natural and proper question now is whether the Union now represents a majority of said employees?

It has been almost three years (up to time of this hearing) since this election. Such delay was not caused by the Company or the Petitioner herein. Petitioner does not know the cause of the delay.

At the time of the hearing before the Trial Examiner on May 1, 1944 there had already been many voluntary changes in the personnel of Company's plant. Since the election and up to May 1st, 1944 some 15, 20 or 25 employees had left the employ of the Company and these had been supplanted by women because men were not available (Appendix 99, also 65). The Court would be justified in taking judicial knowledge of the great changes in employment during the war especially in 1943 and early 1944 due to induction into service and other causes, as it was a matter of common knowledge.

In the instant case said Union never represented the employees or the majority of them for the reason that from the inception the employees as well as the Company denied the contention that the Union represented a majority with the result that the Union was not recognized as the bargaining representative and, therefore, no contract was entered into with said Union.

This, then, is not a case where the Union had previously been selected by the majority and had, for sometime, acted as the bargaining representative. Even in such circumstances, the Board, upon its own Motion or upon application by employees may call an election to determine whether said Union still represents a majority of such employees

where there is a showing that there has been changes in employment, certainly then, in view of all the facts and circumstances shown by this record, the Board's order should be set aside based upon the fact and theory that said election of November 3, 1943 upon a margin of only one alleged majority does not now indicate that said Union now represents a majority.

This is a further reason why the Board's order should be set aside.

III.

Since the Act was intended to be for the benefit and protection of employees engaged in interstate commerce, and since its declared object is to guarantee to the employees the right to choose their own collective bargaining representative without the interference of the employer, the Union, or the Board, then certainly in a contest to determine whether a particular Union actually represents a majority of such employees, said employees have a right to be heard. In this case they were ignored and denied the right by the Board to have a voice in the conduct of the election, which was intended for their benefit in making their choice. Later, during the proceeding before the Board and at the hearings, said employees were denied the right to file a Motion for the privilege to intervene and to file their Answer. They were denied a right to be heard, see dissenting option of Hon. Gerald D. Reilly, only lawyer member of the Board (R. 63).

This is still another reason why the said Board's order should be set aside, and the Circuit Court of Appeals reversed.

CONCLUSION.

Upon the above facts stated and authorities cited in the foregoing petition and memorandum of brief—it is respectfully submitted that the foregoing petition should be granted.

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